IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.11.2007

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THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.881 of 2007

D.Easwari .. Petitioner

Vs.

1. The State of Tamil Nadu
rep. by its Secretary to Government
Prohibition and Excise Department
Fort St.George, Chennai-9.

2. The District Magistrate
and District Collector
Nagapattinam District
Nagapattinam. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue Habeas Corpus directing the respondents to produce the detenu,Devendran, S/o.Mahalaingam who is now detained in Central Prison, Trichy pursuant to the order of the 2nd respondent in C.O.C.No.10/2007 dated 8.4.2007 before this Hon'ble Court call for the records relating to the said order,set aside the same and set the detenu Devendran,s/o.Mahalingam at liberty.

For Petitioner : Mr.S.Kamadevan
For Respondents : Mr.N.R.Elango
Addl. Public Prosecutor

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O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The second respondent herein clamped an order of detention as against the detenu - Devendran, husband of the petitioner, as the said authority arrived at the subjective satisfaction that the said detenu is a Bootlegger and he has to be detained under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Officers, Goondas, Immoral Traffic Offenders, Sand

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Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2. Challenging the abovesaid detention, the wife of the detenu has come forward with the present Habeas Corpus Petition seeking a writ of habeas corpus to call for the records leading to the detention of the detenu, now detained in Central Prison, Trichy under Tamil Nadu Act 14 of 1982 vide detention order dated 8.4.2007 on the file of the second respondent herein made in C.O.C.No.10 of 2007, to set aside the same, to consequently direct the respondents herein to produce the detenu before this Court and to set him at liberty.

3.1. The order of detention dated 8.4.2007 was passed on the basis of ground case in Crime No.400 of 2007 for alleged commission of offences under Sections 4(1)(aaa), 4(1)(i) read with 4(1-A) of the Tamil Nadu Prohibition Act. The allegation against the detenu was that on 17.3.2007 when the Inspector of Police, Enforcement Wing, Nagapattinam along with his police party went on a prohibition raid to Kovilkadambanur Village of Keevalur Police Station, at the backside of Kankuthu Ayyanarkoil, they found the detenu selling illicit arrack from a 120 Litres capacity lorry tube to an unknown person, who ran away seeing the police party. On verification, it was found that the lorry tube contained 105 Litres of Pondicherry arrack and the same emanated poisonous odour resulting in irritation to eyes. The detenu was arrested. The samples of arrack seized were sent for chemical analysis on 21.3.2007 through the learned Judicial Magistrate I, Nagapattinam and the report of the Assistant Director, Regional Forensic Science Laboratory, Thanjavur reveals that the samples contain 1.5 mg% w/v of Atropine per 100 ml. The Assistant Medical Officer opined that consumption of arrack mixed with 1.5 mg% w/v of Atropine in 100 ml. would affect the lungs and heart and is likely to endanger life, even if intensive treatment is given to patient.

3.2. Apart from the above, the detaining authority also took note of the six adverse cases pending against the detenu, viz.,

i. Crime No.499 of 2006 registered on the file of Kilvelur Police Station for the occurrence said to have taken place on 17.8.2006 for the offences punishable under Sections 4(1)(aaa) read with Section 4(1-A) of the Tamil Nadu Prohibition Act;

ii. Crime No.524 of 2006 registered on the file of Kilvelur Police Station for the occurrence said to have taken place on 28.9.2006 for the offences punishable under Sections 4(1)(a) read with Section 4(1-A) of the Tamil Nadu Prohibition Act;

iii. Crime No.1489 of 2006 registered on the file of

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Nagapattinam Prohibition Enforcement Wing for the occurrence said to have taken place on 8.12.2006 for the offences punishable under Sections 4(1)(aaa) read with Section 4(1-A) of the Tamil Nadu Prohibition Act;

iv. Crime No.174 of 2007 registered on the file of Nagapattinam Prohibition Enforcement Wing for the occurrence said to have taken place on 1.2.2007 for the offences punishable under Sections 4(1)(aa) of the Tamil Nadu Prohibition Act;

v. Crime No.108 of 2007 registered on the file of Kilvelur Police Station for the occurrence said to have taken place on 27.2.2007 for the offences punishable under Sections 4(1)(aa) of the Tamil Nadu Prohibition Act; and

vi. Crime No.142 of 2007 registered on the file of Kilvelur Police Station for the occurrence said to have taken place on 14.3.2007 for the offences punishable under Sections 4(1)(aa) of the Tamil Nadu Prohibition Act.

3.3. The detaining authority, having satisfied that the detenu is indulging in activities which are prejudicial to maintenance of public order and public health, passed the impugned order.

4. Heard both sides. We have perused the materials produced before us.

5. The main ground of attack in this case is that in the grounds of detention, at Page (4), the detaining authority has stated that "*The samples of arrack and seized articles in the above said case, were produced before the Court on 17.3.2007 and sample arrack bottles were sent for chemical analysis on 21.3.2007 through the Judicial Magistrate No.I, Nagapattinam on the requisition of the Inspector of Police, Prohibition Enforcement Wing, Nagapattinam....*", but there is no iota of evidence to substantiate as to how such inference was drawn.

6. We have perused the materials produced before us and as contended by the learned counsel for the petitioner, there is no material available on record to substantiate the inference drawn by the detaining authority that the sample of arrack was sent for chemical analysis on 21.3.2007 through the Judicial Magistrate No.I, Nagapattinam on the requisition of the Inspector of Police, Prohibition Enforcement Wing, Nagapattinam. We are, therefore, of the considered opinion that the detaining authority has not applied its mind properly to the above aspect of the case.

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For the abovesaid reason, the order of detention is vitiated. This petition must succeed and the same is ordered as prayed for. The detention order dated 8.4.2007 is set aside. The detenu is directed to be set at liberty forthwith unless his custody is required in connection with any other case.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To:

1. The Secretary to Government
   Prohibition and Excise Department
   State of Tamil Nadu
   Fort St.George, Chennai-9.

2. The District Magistrate
   and District Collector
   Nagapattinam District
   Nagapattinam.

3.The Superintendent,
Central Prison, Trichy.

4.The Joint Secretary to Government,
Public (Law and Order) Department,
Fort St. George, Chennai-9.

5. The Public Prosecutor
   High Court, Madras.

RS (CO)
km/14.11.

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